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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/538,920

12/12/2005

Xavier Blin

272537US0PCT

5672

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7590

04/23/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

HELM, CARALYNNE E

ART UNIT

PAPER NUMBER

1615

NOTIFICATION DATE

DELIVERY MODE

04/23/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

| | | | |
|------------------------------|--------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/538,920 | Applicant(s) BLIN ET AL. | |
| | Examiner CARALYNNE HELM | Art Unit 1615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-150 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 55-150 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 55-121, drawn to a physiologically acceptable, transparent or translucent anhydrous cosmetic composition.

Group II, claim 122, drawn to a method of treating keratinous material of a human.

Group III, claims 123-150, drawn to a method of making a cosmetic product.

The inventions listed as Groups I, II and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: their common technical feature is not novel. The common technical feature of each group is composition comprising an ester oil and at least one polymer that has a weight average molecular weight from 500 and 5000 containing at least one polyorganosiloxane group comprising from 1 to 1,000 polymerized organosiloxane monomer units, wherein the polyorganosiloxane group is present in at least one of the chain of the polymer and grafted to the polymer, and (ii) at least two hydrogen bonding groups selected from the group consisting of an ester, an amide, a sulphonamide, a carbamate, a thiocarbamate, a urea, a urethane, a thiourea, an oxamido group, a guanidine group, a biguanidino group, and combinations thereof; and the polymer is solid at room temperature and soluble in the liquid fatty phase at a temperature of from 25 to 250°C. Barr et al. (U.S. Patent No. 6,051,216 – see IDS) teach one such polymer (with two amide groups and weight average

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molecular weight of approximately 2200) and ester oil combination where the ester oil is isopropyl myristate (see gel Example 4 and example 2). Thus since, the common technical feature was known in is known in the art, this technical feature cannot be deemed as special.

Election

Claims 55-150 are generic to the following disclosed patentably distinct species: compositions comprising an ester oil and at least one polymer, their methods of making, and methods of use. The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. Here the dissimilar species include compositions with widely varying polymeric structures as well as structurally dissimilar additional components such as ester oils and silicone oils. In addition, these species are not obvious variants of each other based on the current record and require separate prior art queries.

Should Group I be elected, the applicant must also make an election for a particular composition such that each claimed component is identified. The polymer and ester oil must be specified such that all variables (e.g. moieties and/or substituent groups) are distinctly identified. Further, the presence or absence of silicone oil (volatile or nonvolatile), nonvolatile oil, solid particles and nonsilicone oil must also be specified. If volatile oil(s) are elected to be present then a particular variety must be specified (e.g. claims 77-79).

Should Group II or III be elected, the applicant must also make an election for a particular composition such that each claimed component is identified. The polymer and ester oil must be specified such that all variables (e.g. moieties and/or substituent groups) are distinctly identified.

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Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention and species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention and species.

The election of an invention and species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions (or species) are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions (or species) to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions (or species) unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention (or species).

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caralynne Helm whose telephone number is 571-270-3506. The examiner can normally be reached on Monday through Thursday 8-5 (EDT).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Caralynne Helm/
Examiner, Art Unit 1615

/Michael P Woodward/
Supervisory Patent Examiner, Art Unit
1615